9 N.Y.C.R.R. 8004.2, 8004.3, 8005.21, 8010.1, 8010.2, 8010.3 *

Bracketed language is to be removed, underlined language is to be added.

Subdivision (a) of Section 8004.2 of Title 9 N.Y.C.R.R. is amended to read as follows:

If a parole officer having charge of a releasee shall have reasonable cause to believe that such person has lapsed into criminal ways[or company,] or has violated one or more of the conditions of his release in an important respect, such parole officer shall report such fact to a member of the board or a designated officer. Designated officer as used herein shall mean a senior parole officer, supervising parole officer, deputy regional director, regional director, deputy director of operations, the director of operations, chief of the parole violation unit, assistant chief of the parole violation unit, and any officer who has been provided with specific authorization by the Board of Parole. No officer shall issue a warrant in a case where he is the one who furnishes the report upon which it is based.

Subdivision (c) of Section 8004.2 of Title 9 N.Y.C.R.R. is amended to read as follows:

A warrant for retaking and temporary detention may issue when there is reasonable cause to believe that the releasee has lapsed into criminal ways[or company,] or has violated the conditions of his release in an important respect. Reasonable cause exists when evidence or information which appears reliable discloses facts or circumstances that would convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that a releasee has committed the acts in question or has lapsed into criminal ways[or company]. Such apparently reliable evidence may include hearsay.

Subdivision (e)(1) of Section 8004.3 of Title 9 N.Y.C.R.R. is amended to read as follows:

(1) Where a final revocation hearing has not yet commenced by the swearing of witnesses and the taking of testimony or evidence, delinquency may be cancelled and the warrant vacated by three members of the board or

the administrative law judge, who shall state their reasons in writing for the cancellation at or before the time of the final hearing but prior to the swearing of witnesses and the taking of testimony or evidence. In cases where the alleged violator is serving a sentence for a felony offense under articles 125, 130, 135, 230, 235, 255, [or] 263, 485 or 490 of the Penal Law[or section 255.25 thereof], or where the violator had been granted early conditional parole for deportation only or conditional parole for deportation only pursuant to section 259-i (2) (d) of the Executive Law, such cancellation of delinquency can only be effectuated by the three members of the Board of Parole. Cancellation of delinquency under this subdivision shall not preclude a subsequent declaration of delinquency based on the same charges.

Subdivision (g) of Section 8004.3 of Title 9 N.Y.C.R.R. is amended to read as follows:

Final declaration of delinquency. Whenever a paroled or conditionally released person, or person serving a period of post release supervision, has been:

(1) convicted of a new felony committed while under his/her present parole, conditional release or period of post release supervision, and

(2) sentenced to an indeterminate or determinate term upon such conviction, the board may issue a final declaration of delinquency, in lieu of directing that a final hearing be held, which will have the effect of revoking such person's parole, conditional release or period of post release supervision. Any final declaration of delinquency that may be issued shall be so issued upon such person's reception at an institution under the jurisdiction of the[department of correctional services] Department of Corrections and Community Supervision pursuant to said new indeterminate or determinate sentence. The date of delinquency for the final declaration of delinquency by the board may be either the date of the commission of the new felony offense or the date of sentencing for such offense. Subsequent to the issuance of the final declaration of delinquency, the inmate's

next appearance before the board will be governed by the calculation of the minimum sentence, or the calculation of the aggregate minimum sentences, in accordance with applicable law.

Subdivision (a) of Section 8005.21 of Title 9 N.Y.C.R.R. is amended to read as follows:

It is the policy of the Board of Parole to review, sua sponte, any revocation determination wherein the time assessment imposed is in excess of 24 months[, except for shock incarceration parole violators who are reincarcerated to their statutory minimum in accordance with section 8010.3 of this Title]. The purpose of said review is to provide the members of the board, acting in executive session, an opportunity to freely discuss such determinations, to decide, in view of the totality of the case record, whether such determination is considered to be appropriate by the majority of the members of the board, given the fact that the underlying revocation decision is rendered by a single board member. The delinquent time case review is not a substitute for an administrative appeal, which is taken and decided pursuant to Part 8006 of this Title. Rather, given that an administrative appeal of a revocation determination is limited to a review of[of] the revocation record, the delinquent time case review is intended to permit the board to consider any information in its records that it considers to be pertinent to the case, so as to facilitate equitable and consistent decision making. Insofar as the delinquent time case review represents an internal opportunity for the members of the board to discuss cases that are within the aforementioned category, the time for the conduct of said review may vary in the sole discretion of the board and, in keeping with the purpose of the case review, the board will not solicit or accept input from outside of the board, or advise the subject of the case review that the matter is under consideration.

Section 8010.1 of Title 9 N.Y.C.R.R. is amended to read as follows:

[(a)] It is the responsibility and intent of the[Division] <u>Board of Parole</u> to fully implement the provisions of article 26-A of the Correction Law relating to shock incarceration to the extent that those provisions relate to the

operation of the board and[Division of Parole] Department of Corrections and Community Supervision. The provisions of this Part will structure the board's and[Division's] department's policies in relation to this program, designed to afford certain relatively young, nonviolent offenders an opportunity to learn selfdiscipline and control.

[(b) Due to the nature of the shock incarceration program, wherein an eligible inmate may be paroled prior to the expiration of the minimum period of imprisonment imposed by the court upon successful completion of the program, special rules shall apply to such persons, and they shall be treated as a separate category of offender while within the jurisdiction of the division.]

Section 8010.2 of Title 9 N.Y.C.R.R. is amended to read as follows:

(a) The Legislature mandated that the shock incarceration program be available only to specially selected, nonviolent eligible inmates, and the program incorporates a highly structured routine of discipline, intensive regimentation, exercise and work therapy, together with substance abuse therapy, education, and pre-release and self-improvement counseling. The [b]Board of Parole, after consideration of the eligibility criteria established by the Legislature, and the extensive, stringent criteria established by the Department of [Correctional Services] Corrections and Community Supervision for program selection and retention, believes that an inmate who is selected and who thereafter successfully completes the entire shock incarceration program will normally represent an excellent candidate for release onto parole. Therefore, an inmate's successful completion of the program, and receipt of a certificate of earned eligibility, shall create a presumption in favor of parole release.

(b) An eligible inmate participant in the shock incarceration program shall be considered for release onto parole prior to such inmate's completion of the program, except as otherwise specified in paragraph [(g)](f)(1) of this section. A decision to grant or deny release onto parole will be made by at least two members of the board, and will be premised on reports prepared and/or compiled by the [division]department concerning the inmate

participant. At the time of such review by members of the board, the board will assume that the inmate will successfully complete the program and be awarded a certificate of earned eligibility by the [D]department[of Correctional Services]. Upon the completion of its review, the board will either: (1) issue a conditional grant of parole, conditioned on the inmate's successful completion of the shock incarceration program and the issuance of a certificate of earned eligibility to the inmate; or (2) deny release. If release is denied, the inmate shall be informed in writing, within two weeks of the board's rendition of its decision, of the factors and reasons for such denial. An inmate denied parole release shall thereafter appear at least one month prior to the expiration of the minimum period of imprisonment fixed by the court, in accordance with the provisions of Part 8002 of this Title.

(c) A conditional grant of parole shall become final upon an inmate's successful completion of the shock incarceration program and the issuance to that inmate of a certificate of earned eligibility. Such an inmate shall thereafter be released onto parole in accordance with the provisions of subdivision (e) of this section.

(d) A conditional grant of parole shall be rendered null and void upon the removal of the inmate from the shock incarceration program for any reason prior to the completion of the program, or upon the failure of the inmate to obtain a certificate of earned eligibility upon the completion of the program. Notice to the inmate of the nullification of the conditional grant of parole shall not be required, as the inmate's failure to successfully complete the program or receive a certificate of earned eligibility upon program completion would render such inmate statutorily ineligible for release onto parole. An inmate whose conditional grant of parole has been rendered null and void shall thereafter appear at least one month prior to the expiration of the minimum period of imprisonment fixed by the court, in accordance with the provisions of Part 8002 of this Title.

(e) An inmate granted parole upon completion of the shock incarceration program shall be released upon a date specified by the board that shall correspond with the date upon which the inmate has completed the entire sixmonth shock incarceration program, or on a date specified by the board as soon thereafter as practicable.

[(f) An inmate denied parole release despite his successful completion of the shock incarceration program shall not, if later paroled or conditionally released, be subject to the special revocation provisions of section 8010.3 of this Part.]

[(g)](f) An eligible inmate who is removed from the shock incarceration program by the [D]department [of Correctional Services]for any reason, and who is subsequently afforded another opportunity to participate in this program, shall be considered for release onto parole de novo in accordance with the preceding subdivisions of this section, except that: (1) such consideration may occur subsequent to the inmate's completion of this program, where reinstatement has occurred less than 60 days prior to the inmate's completion of the program; and (2) release onto parole, if granted, shall thereafter occur upon a date specified by the board that shall correspond with the inmate's completion of the program, or as soon as practicable thereafter. An inmate who has successfully completed the shock incarceration program and who has been issued a certificate of earned eligibility prior to being considered for release onto parole by the board, or subsequent to the board's decision but prior to actual release onto parole, may be subject to rescission in accordance with the provisions of section 8002.5 of this Title.

Section 8010.3 of Title 9 N.Y.C.R.R. is repealed.